

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Gordon Franklin, Jr.,

Case No. 22-cv-3065 (JWB/LIB)

Petitioner,

v.

REPORT AND RECOMMENDATION

Steve Kallis,

Respondent.

This matter comes before the undersigned United States Magistrate Judge, pursuant to a general assignment made in accordance with the provision of 28 U.S.C. § 636, upon the routine supervision of the matters that pend before the undersigned.

On December 12, 2022, the Clerk of this Court sent Petitioner a letter indicating that the Court had not received either this action's filing fee or an application to proceed in forma pauperis ("IFP") in this action. (Letter [Docket No. 4]). Petitioner was permitted fifteen (15) days (i.e., until December 27, 2022) to submit the fee or an application. (*Id.*). Petitioner was forewarned that if he failed to do so, his case "could be summarily dismissed without prejudice." (Letter [Docket No. 4].)

That deadline has now passed, and Petitioner has not paid the initial partial filing fee or submitted an IFP application. Accordingly, this Court now recommends, in accordance with the Clerk's letter and the warning provided to Petitioner, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. See, e.g., Henderson v. Renaissance Grand Hotel, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

Based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS
HEREBY RECOMMENDED THAT** this action be **DISMISSED without prejudice** under
Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: January 13, 2023

s/Leo I. Brisbois
Hon. Leo I. Brisbois
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. See Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).